

FINAL

Mass. R. Civ. P. 30

(b) Notice of the Deposition; other formal requirements

...

(4) By Remote Means. By leave of court upon motion with notice and opportunity to be heard in opposition, or by stipulation in writing of all parties, a deposition may be taken in a civil case pursuant to Mass. R. Civ. P. 30 remotely by telephone or video-conferencing platform (remote deposition), in a manner that allows for the deponent, all other persons entitled to attend and all other necessary persons (e.g., the officer/court reporter) to participate without attending the deposition in person, subject to the following:

- (A) In addition to any other requirements in the applicable rules, the notice of a remote deposition shall specify, reasonably in advance of the deposition, the information needed to participate in the remote deposition, including but not limited to the identification of the remote video-conferencing platform.
- (B) An officer or other person before whom the deposition is to be taken is authorized to administer oaths and take testimony without being in the presence of the deponent, so long as the officer or other person before whom the deposition is to be taken can both see and hear the deponent for purposes of positively identifying the deponent.
- (C) The sound and video feeds for the deponent, participating counsel for the parties, self-represented parties, and the court reporter must remain on while the deposition is on the record. Other attendees should mute their sound feed and should shut off their video feed when not speaking, after identifying themselves for the record. Only persons who would be entitled to attend a live deposition in the case may observe the remote deposition. Any person who attends a remote deposition, at any time during the deposition, shall be identified for the record. The video platform used for the deposition must be able to show a real-time list of those persons attending the deposition and attendees must take reasonable efforts to be identified on that list.
- (D) Only the deponent's counsel and in-house counsel for a party-employed deponent are permitted to be in the same physical location as the deponent during the remote deposition. If the deponent counsel and in-house counsel are present in the same physical location as the deponent during a remote deposition, they must separately log in to the remote deposition so that they are individually identified during the remote deposition and the deponent can be shown separately. If any person enters the room where the deponent is located during the deposition, the

deponent or counsel in the room shall immediately notify the examining attorney or self-represented party.

- (E) For the purposes of this rule and Rules 28(a), 37(a)(1), 37(b)(1), and 45(d), a remote deposition shall be considered taken in the county and at the place where the deponent is located.
- (F) Parties and deponents must confer and cooperate to the fullest extent possible to attempt to resolve all issues related to remote depositions, including the video platform that will be used and the handling of exhibits during the remote deposition. The parties and deponents must cooperate with each other, the court reporter, and the operator/videographer, if any, in planning for and conducting remote depositions.
- (G) Where an audio-visual recording of a deposition is conducted pursuant to this rule, the operator/videographer may record remotely, following the procedures set forth in this rule. Unless all parties agree or the court orders otherwise, during the deposition, the operator/videographer will video record only the deponent, except that, at the request of the questioning attorney or self-represented party, a split screen may be used as necessary to record an exhibit while the deponent is being questioned concerning the exhibit. The deponent must be provided a video feed of the questioning attorney or self-represented party. No person other than the operator/videographer and court reporter may record the deposition by video or audio means.
- (H) Nothing in this rule is intended to: (i) address whether a remote deponent is deemed “unavailable” within the meaning of Mass. R. Civ. P. 32(a)(3) for the purposes of using that witness’s deposition at trial; or (ii) alter a court’s authority to compel testimony of non-party witnesses.